

COPY

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 JAMES HUMES
Chief Deputy Attorney General
3 THOMAS GREENE
Chief Assistant Attorney General
4 THEODORA BERGER
Senior Assistant Attorney General
5 SANDRA GOLDBERG
Deputy Attorney General
6 State Bar No. 138632
LAURA ZUCKERMAN
7 Deputy Attorney General
State Bar No. 161896
8 1515 Clay Street, 20th Floor
Oakland, CA 94612
9 Telephone: (510) 622-2145
Fax: (510) 622-2270
10 sandra.goldberg@doj.ca.gov

11 Attorneys for People of the State of California *ex rel.*
Edmund G. Brown, Attorney General of the State of
12 California

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 **PEOPLE OF THE STATE OF CALIFORNIA**
17 *ex rel.* EDMUND G. BROWN JR.,
18 **ATTORNEY GENERAL OF THE STATE OF**
CALIFORNIA,

19 Plaintiff,

20 v.

21 **ENVIRONMENTAL PROTECTION**
22 **AGENCY; NATIONAL HIGHWAY TRAFFIC**
23 **SAFETY ADMINISTRATION;**
DEPARTMENT OF TRANSPORTATION;
24 **and OFFICE OF MANAGEMENT AND**
BUDGET,

25 Defendants.
26

27 The People of the State of California, by and through Plaintiff Edmund G. Brown Jr.,
28 Attorney General of the State of California, bring suit under the Freedom of Information Act, 5
Complaint for Injunctive Relief Under FOIA

ORIGINAL
FILED

APR 11 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

ADR

C07-02055

JSW

Case No.:

**COMPLAINT FOR INJUNCTIVE
RELIEF UNDER THE FREEDOM
OF INFORMATION ACT**

1 U.S.C. §552, *as amended* ("FOIA"), seeking injunctive relief to require the Environmental
 2 Protection Agency, National Highway Traffic Safety Administration, Department of
 3 Transportation, and Office of Management and Budget (collectively, "Defendants") to provide
 4 records in response to Plaintiff's requests and to refrain from improperly withholding records.
 5 The People allege as follows:

6 JURISDICTION

7 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5
 8 U.S.C. §552(a)(4)(B).

9 2. Venue in the Northern District of California is proper under 5 U.S.C.
 10 §552(a)(4)(B).

11 PARTIES

12 3. Plaintiff Edmund G. Brown Jr. is the Attorney General of the State of California.
 13 Acting in his official capacity as chief law enforcement officer of the State of California, he has
 14 requested and been denied access to the records at issue here.

15 4. Defendant Environmental Protection Agency ("EPA") is an agency within the
 16 meaning of 5 U.S.C. §552(f), is subject to the requirements of FOIA, and has improperly
 17 withheld the records at issue here.

18 5. Defendant National Highway Traffic Safety Administration ("NHTSA"), an
 19 agency within the United States Department of Transportation ("DOT"), is an agency within the
 20 meaning of 5 U.S.C. §552(f), is subject to the requirements of FOIA, and has improperly
 21 withheld the records at issue here.

22 6. Defendant DOT is an agency within the meaning of 5 U.S.C. §552(f), is subject to
 23 the requirements of FOIA, and has improperly withheld the records at issue here.

24 7. Defendant Office of Management and Budget ("OMB"), an office within the
 25 Executive Office of the President, is an agency within the meaning of 5 U.S.C. §552(f), is subject
 26 to the requirements of FOIA, and has improperly withheld the records at issue here.

27 FACTUAL ALLEGATIONS

28 8. On March 28, 2006, NHTSA issued the final rule regarding Average Fuel
 Complaint for Injunctive Relief Under FOIA

1 Economy Standards for Light Trucks; Model Years 2008-2011, published at Federal Register
2 volume 71, page 17566. These rules modify the corporate average fuel economy ("CAFE")
3 program for light trucks.

4 9. In a letter dated July 18, 2006, attached as Exhibit A ("the DOT/OMB FOIA
5 Request"), Plaintiff requested from DOT, NHTSA and OMB the disclosure of records related
6 to: (1) "the discussion of state regulation, and/or specifically the State of California's regulation,
7 of motor vehicle carbon dioxide emissions found in 'Section XIV.D.Preemption,' published in
8 the Federal Register on April 6, 2006, at volume 71, pages 17654-17670"; (2) certain meetings
9 and phone conversations with NHTSA regarding the above-referenced regulation; and (3)
10 meetings, conferences, and discussions with the President regarding state regulation of motor
11 vehicle carbon dioxide emissions and/or preemption of such regulations.

12 10. In a letter dated July 18, 2006, attached as Exhibit B ("the EPA FOIA Request"),
13 Plaintiff requested from EPA "the disclosure of all records ... related to state regulation of motor
14 vehicle carbon dioxide emissions and/or preemption of such state regulation."

15 11. In a letter dated August 8, 2006, attached as Exhibit C, EPA granted a fee waiver
16 with respect to the EPA FOIA Request. In a letter dated August 14, 2006, attached as Exhibit D,
17 EPA acknowledged receipt of the EPA FOIA Request.

18 12. In a letter dated September 11, 2006, attached as Exhibit E, EPA discussed the
19 EPA FOIA Request and stated EPA had not yet been able to obtain the requested records.

20 13. After discussions between Plaintiff and EPA, in a letter dated October 11, 2006,
21 attached as Exhibit F, Plaintiff agreed to narrow the scope of the EPA FOIA Request, with
22 respect to records from the EPA Administrator's Office, to the time period from January 2000 to
23 the present.

24 14. In a letter to EPA dated November 13, 2006, attached as Exhibit G, Plaintiff again
25 requested that EPA provide records sought in the EPA FOIA Request. As of this date, EPA still
26 has not provided the records sought in the EPA FOIA Request.

27 15. The Secretary of Transportation acknowledged receipt of the DOT/OMB FOIA
28 Request in a letter dated August 3, 2006, attached as Exhibit H.

1 16. In a telephone conversation on October 30, 2006, DOT and NHTSA indicated that
2 they would respond to the DOT/OMB FOIA Request on or about November 10, 2006. They did
3 not do so. Plaintiff sent DOT and NHTSA a letter dated November 20, 2006, attached as Exhibit
4 I, referencing the October 30, 2006 conversation and requesting that DOT and NHTSA provide
5 all the non-exempt, responsive records that had been located at that time. As of this date, neither
6 DOT nor NHTSA have provided the records sought in the DOT/OMB FOIA Request.

7 17. OMB responded to the DOT/OMB FOIA Request by letter dated September 20,
8 2006, attached as Exhibit J. OMB stated that it had located 141 potentially responsive
9 documents; of these 141 documents, it was withholding 122 in their entirety, and portions of ten
10 others, based on 5 U.S.C. section §552(b)(5), which exempts from public disclosure "inter-
11 agency or intra-agency memorandums or letters which would not be available by law to a party
12 other than an agency in litigation with the agency. . . ."

13 18. By letter dated October 4, 2006, attached as Exhibit K, Plaintiff submitted an
14 appeal of OMB's September 20, 2006 response to the DOT FOIA Request, both as to the 122
15 withheld documents and the redacted portions of the 10 documents that were produced in part.
16 Plaintiff's appeal was timely pursuant to OMB regulations at 5 C.F.R. §1303.10(e) (2005).

17 19. By letter dated November 6, 2006, attached as Exhibit L, OMB made a final
18 denial of the DOT/OMB FOIA Request by stating that it had counted the documents incorrectly
19 and was now withholding 142 of the 163 responsive documents in their entirety; the redacted
20 information in the ten documents previously produced would not be disclosed; and two
21 additional responsive documents that OMB had located were now being provided in their
22 entirety.

23
24 **FIRST CAUSE OF ACTION FOR INJUNCTIVE RELIEF
 ALLEGED AGAINST DEFENDANT EPA**

25 20. Plaintiff incorporates by reference Paragraphs 1 through 19 inclusive, as if fully
26 set forth herein.

27 21. Plaintiff sent the EPA FOIA Request attached as Exhibit A to Defendant EPA on
28 July 18, 2006.

1 22. Plaintiff is informed and believes that the information sought by the EPA FOIA
2 Request is contained in agency records within EPA's possession and control.

3 23. By the terms of 5 U.S.C. §552(a)(6)(A), EPA's response to the EPA FOIA
4 Request was due within twenty working days, subject to a ten working-day extension. As of this
5 date, EPA has not provided the records sought in the EPA FOIA Request.

6 24. Pursuant to 5 U.S.C. §552(a)(3), Plaintiff has a right of access to the requested
7 records from EPA, and FOIA requires their disclosure. As they do not fall within any of the
8 FOIA's exemptions from disclosure, Defendant EPA has no legal basis for withholding such
9 records.

10 25. Pursuant to 5 U.S.C. §552(b), even if it were to be established that any of the
11 requested records contained information exempt from disclosure under 5 U.S.C. §552(b),
12 Plaintiff has a right of access to all reasonably segregable non-exempt portions of such records,
13 and FOIA requires their disclosure. As they do not fall within any of the FOIA's exemptions
14 from required disclosure, Defendant EPA has no legal basis for withholding such portions of the
15 records sought.

16 26. Alternatively, even if the records sought were otherwise exempt from required
17 disclosure pursuant to 5 U.S.C. §552(b), there is a strong public interest in their disclosure to the
18 Attorney General, and EPA should exercise its discretion to disclose the requested records.

19 27. By the terms of 5 U.S.C. §552(a)(6)(C), Plaintiff is deemed to have exhausted his
20 administrative remedies by virtue of EPA's failure to provide the records sought in the EPA
21 FOIA Request within the time limits set forth in 5 U.S.C. §552(a)(6)(A).

22 **SECOND CAUSE OF ACTION FOR INJUNCTIVE RELIEF**
23 **ALLEGED AGAINST DEFENDANTS DOT AND NHTSA**

24 28. Plaintiff incorporates by reference Paragraphs 1 through 27 inclusive, as if fully
25 set forth herein.

26 29. Plaintiff sent the DOT/OMB FOIA Request attached as Exhibit B to Defendants
27 DOT and NHTSA on July 18, 2006.

28 30. Plaintiff is informed and believes that the information sought by the DOT/OMB

1 FOIA Request is contained in agency records within DOT and NHTSA's possession and control.

2 31. By the terms of 5 U.S.C. §552(a)(6)(A) and 49 C.F.R. §7.31, DOT and NHTSA's
3 response to the DOT/OMB FOIA Request was due within twenty working days, subject to a ten
4 working-day extension. As of this date, neither DOT nor NHTSA has provided the records
5 sought in the DOT/OMB FOIA Request.

6 32. Pursuant to 5 U.S.C. §552(a)(3), Plaintiff has a right of access to the requested
7 records from DOT and NHTSA, and FOIA requires their disclosure. As they do not fall within
8 any of the FOIA's exemptions from disclosure, Defendants DOT and NHTSA have no legal
9 basis for withholding such records.

10 33. Pursuant to 5 U.S.C. §552(b), even if it were to be established that any of the
11 requested records contained information exempt from disclosure under 5 U.S.C. §552(b),
12 Plaintiff has a right of access to all reasonably segregable non-exempt portions of such records,
13 and FOIA requires their disclosure. As they do not fall within any of the FOIA's exemptions
14 from required disclosure, Defendants DOT and NHTSA have no legal basis for withholding such
15 portions of the records sought.

16 34. Alternatively, even if the records sought were otherwise exempt from required
17 disclosure pursuant to 5 U.S.C. §552(b), there is a strong public interest in their disclosure to the
18 Attorney General, and the agencies should exercise their discretion to disclose the requested
19 records.

20 35. By the terms of 5 U.S.C. §552(a)(6)(C), Plaintiff is deemed to have exhausted his
21 administrative remedies by virtue of DOT and NHTSA's failure to provide the records sought in
22 the DOT/OMB FOIA Request within the time limits set forth in 5 U.S.C. §552(a)(6)(A).

23
24 **THIRD CAUSE OF ACTION FOR INJUNCTIVE RELIEF**
ALLEGED AGAINST DEFENDANT OMB

25 36. Plaintiff incorporates by reference Paragraphs 1 through 35 inclusive, as if fully
26 set forth herein.

27 38. Plaintiff sent the DOT/OMB FOIA Request attached as Exhibit B to Defendant
28 OMB on July 18, 2006.

1 39. Plaintiff is informed and believes that the information sought by the DOT/OMB
2 FOIA Request is contained in agency records within Defendant OMB's possession and control.

3 40. By letter dated September 20, 2006, Defendant OMB denied Plaintiff's request in
4 its entirety as to 132 out of 142 responsive documents identified, alleging that they were exempt
5 from disclosure under 5 U.S.C. §552(b)(5), and denied it in part as to ten additional documents,
6 portions of which it withheld based on the exemption in 5 U.S.C. §552(b)(5).

7 41. Plaintiff filed an administrative appeal of this decision pursuant to 5 U.S.C.
8 §552(a)(6)(A) on October 4, 2006. Plaintiff's appeal was timely pursuant to OMB regulations at
9 5 C.F.R. §1303.10(e) (2005).

10 42. By letter dated November 6, 2006, Defendant OMB made a final denial of
11 Plaintiff's request as to (1) 142 responsive documents that it withheld in their entirety, again
12 alleging that they were exempt from disclosure under 5 U.S.C. §552(b)(5), and (2) the redacted
13 portions of the 10 documents Defendant OMB produced in part, which were withheld based on
14 the exemption in 5 U.S.C. §552(b)(5).

15 43. The 142 agency records withheld in their entirety, and the redacted portions of the
16 10 records that were produced in part, have been improperly withheld by OMB. Pursuant to 5
17 U.S.C. §552(a)(3), Plaintiff has a right of access to these records, and FOIA requires their
18 disclosure. As they do not fall within any of the FOIA's exemptions from required disclosure,
19 Defendant OMB has no legal basis for withholding them.

20 44. Pursuant to 5 U.S.C. §552(b), even if it were to be established that any of the
21 requested records contained information exempt from disclosure under 5 U.S.C. §552(b),
22 Plaintiff has a right of access to all reasonably segregable non-exempt portions of such records,
23 and FOIA requires their disclosure. As they do not fall within any of the FOIA's exemptions
24 from required disclosure, Defendant OMB has no legal basis for withholding such portions of the
25 records sought.

26 45. Alternatively, even if the records sought were otherwise exempt from required
27 disclosure pursuant to 5 U.S.C. §552(b), there is a strong public interest in their disclosure to the
28 Attorney General, and OMB should exercise its discretion to disclose such documents.

1 46. Plaintiff has exhausted his administrative remedies.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff requests that this Court:

4 1. Take jurisdiction of this cause;

5 2. Order each defendant to prepare and file an itemized index, for all withheld
6 documents and portions of documents, containing all information needed to evaluate each
7 claimed exemption, including but not limited to, identification of the segregable portions of the
8 documents withheld, the nature of the information contained in each portion, whether factual
9 information is contained in each portion, and the specific justification for withholding of each
10 such portion;

11 3. Enjoin Defendants from withholding all records or portions of records improperly
12 withheld, and order their immediate disclosure to Plaintiff;


13 4. Grant Plaintiff his costs and attorneys' fees in this action, pursuant to 5 U.S.C.
14 §552(a)(4)(E); and

15 5. Grant such other and further relief as the Court shall deem just and proper.

16 Dated: April 11, 2007

17 Respectfully submitted,

18 EDMUND G. BROWN JR.
Attorney General of the State of California
19 JAMES HUMES
Chief Deputy Attorney General
20 THOMAS GREENE
Chief Assistant Attorney General
21 THEODORA BERGER
Senior Assistant Attorney General
22 LAURA J. ZUCKERMAN
Deputy Attorney General

23 

24 SANDRA GOLDBERG
25 Deputy Attorney General

26 Attorneys for People of the State of California
27 *ex rel.* Edmund G. Brown Jr., Attorney
28 General of the State of California

EXHIBIT A

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: 510-622-2100
Telephone: 510-622-2145
Facsimile: 510-622-2270
E-Mail: sandra.goldberg@doj.ca.gov

July 18, 2006

By Overnight Mail

National Highway Traffic Safety Administration
Executive Secretariat
Room 5221
400 Seventh Street, S.W.
Washington, DC 20590

Donald Hawkins, FOIA Officer
Office of Management & Budget
Room 9026
725 17th Street, NW
Washington, DC 20503

Kathy Ray
U.S. Department of Transportation
Office of the Secretary of Transportation
C-12/Room 5432
400 Seventh Street, SW
Washington, DC 20590

RE: Request for Records Under FOIA

Dear FOIA Officers:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, and its implementing regulations, I hereby make this request for records on behalf of the Attorney General of the State of California. This request describes (1) the records sought; and (2) our request for a fee waiver for production of these records.

Request for Records

The Office of the Attorney General respectfully requests the disclosure of:

(1) All records, including agendas, minutes and attendance lists of meetings, e-mails, correspondence, notes of phone conversations, proposals, drafts, comments, notes, memoranda, intra and inter-agency communications, and any other record (hereafter "records") related to the discussion of state regulation, and/or specifically the State of California's regulation, of motor vehicle carbon dioxide emissions found in "Section XIV. D. Preemption," published in the Federal Register on April 6, 2006, at volume 71, pages 17654-17670.

July 18, 2006

Page 2

(2) All records related to the meetings on October 10, 2005 and November 4, 2005, or at any other time, between representatives of National Highway Traffic Safety Administration ("NHTSA") and representatives of Nissan North America, Inc. regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck Corporate Average Fuel Economy ("CAFE") program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published April 6, 2006, including any records provided in preparation for the meetings or provided by any participant in the meetings.

(3) All records related to the meeting on January 17, 2005, or at any other time, between representatives of NHTSA and representatives of DaimlerChrysler regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck CAFE program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published on April 6, 2006, including any records provided in preparation for the meetings or any records provided by any participant in the meetings.

(4) All records related to the periodic telephone conversations from April 27, 2004 to March 16, 2006, or at any other time, between representatives of NHTSA and representatives of General Motors, Ford Motor Company, DaimlerChrysler Corporation, American Honda Motor Company, Inc., Hyundai Kia America Technical Center, Inc., Mitsubishi Motors R&D of America, Inc., Nissan North America, Inc., and/or Fuji Heavy Industries, USA (parent company of Subaru) regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck CAFE program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published on April 6, 2006, including any records provided in preparation for the conversations or provided by any participant in the conversations.

(5) All records related to discussions of state regulation of motor vehicle carbon dioxide emissions and/or preemption of such regulation at any meetings, conferences, or discussions that took place between President Bush and executives and/or representatives of automobile manufacturers, and any records related to that issue that were provided in preparation for such meetings, conferences or discussions that were either planned or that took place, and any records provided by any participant in such meetings, conferences or discussions.

If a portion of a record is responsive to this request, but another portion is not responsive, we request that you disclose the entire record, without redacting any non-responsive portions.

These requests do not apply to a record that in its entirety contains only details of technologies and product plans for which NHTSA granted an automobile manufacturer's request for confidential treatment; or if a portion of a requested record contains such information, this request does not apply to the confidential portion of the record [which should be redacted, with the remainder of the record produced].

July 18, 2006

Page 3

This request includes records at the headquarters or other offices of the National Highway Traffic Safety Administration, Office of Management and Budget and Department of Transportation, and in the individual files of agency employees. This request is made with the understanding that it will be forwarded to any other offices that may be in the possession of the requested documents.

The Attorney General believes that the documents sought are of great public interest and not exempt from required disclosure under FOIA. In addition, given that it is in the public interest to disclose these records, even if you determine that certain of the records sought are exempt under FOIA, the Attorney General requests that you exercise your discretionary authority to disclose these records.

If you deny any part of this request, please cite each specific reason that you believe justifies your refusal to release the records. Should you elect to withhold any records or portions of records responsive to this request under the exemption at 5 U.S.C. § 552(b)(5), for each withheld record or portion, please state the identify the author and all recipients; the date; the subject of the record; and the particular privilege claimed. For each record or portion withheld under 5 U.S.C. § 552(b)(5) based on a claim of deliberative process privilege, please also provide a complete explanation of why the record qualifies for that privilege.

Request For a Fee Waiver

The California Attorney General is, of course, a noncommercial organization not subject to review fees. In addition, the Attorney General requests a waiver of search and copying fees associated with this request. Under FOIA, agencies must waive such fees where disclosure is likely to contribute significantly to public understanding of the operations and activities of the government and disclosure is not primarily in the commercial interest of the requesters. 5 U.S.C. § 552(a)(4)(A)(iii). Under the criteria set forth at 49 C.F.R. § 7.44(f) (Department of Transportation) and 5 C.F.R. § 1303.70 (Office of Management and Budget), such a waiver is appropriate here. The Attorney General's Office acts on behalf of the State and the public pursuant to the California Constitution, statutory authority, and common law. See Cal. Const. art. V, § 13; Cal. Gov. Code §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners*, 11 Cal.3d 1, 14-15 (1974).

The subject of this request concerns records related to views expressed by NHTSA that are, in part, directed specifically at regulations developed by California's Air Resources Board that require reduction of motor vehicle greenhouse gas emissions, including carbon dioxide. Those California regulations are the subject of significant interest to the public, the legislature, and the media in the State of California. The California Attorney General is defending those regulations against a challenge by the auto industry. A key issue in state-federal relations and in the ability of the State of California to promulgate regulations protecting public health and safety is the nature and extent of federal preemption of state law. NHTSA's discussion of preemption published in the Federal Register (volume 71, pages 17654-17670) directly relates to that issue.

July 18, 2006

Page 4

The requested records will help the Attorney General in representing over 30 million people of the State of California and will help to significantly increase public understanding by Californians of the decision-making process of NHTSA, as well as the roles of other agencies. The State of California, and the people represented by the Attorney General, would benefit significantly by access to the information requested.

The Attorney General seeks the materials without reference to any commercial interest.

Please send all requested materials to my attention at the address listed above. I ask that you provide all records created electronically (or currently existing in electronic format) on a CD. Please call me at 510-622-2145 if you have any questions about this request.

Sincerely,



SANDRA GOLDBERG

Deputy Attorney General

For BILL LOCKYER
Attorney General

cc: Marc Melnick
Ken Alex
Susan Fiering
Laura Zuckerman

EXHIBIT B

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: 510-622-2100
Telephone: 510-622-2145
Facsimile: 510-622-2270
E-Mail: sandra.goldberg@doj.ca.gov

July 18, 2006

By Overnight Delivery

Larry Ray, National FOIA Officer
Environmental Protection Agency
Records, FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Request for Records Under FOIA

Dear Mr. Ray:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, and its implementing regulations, I hereby make this request for records on behalf of the Attorney General of the State of California. This request describes (1) the records sought; and (2) our request for a fee waiver for production of these records.

Request for Records

The Office of the Attorney General respectfully requests the disclosure of all records, including agendas, minutes and attendance lists of meetings, e-mails, correspondence, notes of phone conversations, proposals, drafts, comments, notes, memoranda, intra and inter-agency communications, and any other record (hereafter "records") related to **state regulation** of motor vehicle carbon dioxide emissions and/or preemption of such state regulation.

If a portion of a record is responsive to the above request, but another portion is not responsive, we request that you disclose the entire record, without redacting any non-responsive portions.

This request includes records at the headquarters or other offices of the Environmental Protection Agency ("EPA"), and in the individual files of agency employees. This request is made with the understanding that it will be forwarded to any other offices that may be in the possession of the requested documents.

This request does not apply to:

(a) records addressing regulation of motor vehicle carbon dioxide emissions by EPA; and

July 18, 2006

Page 2

(b) a record that in its entirety contains only details of technologies and product plans for which the National Highway Traffic Safety Administration ("NHTSA") granted an automobile manufacturer's request for confidential treatment; or if a portion of a requested record contains such information, this request does not apply to the confidential portion of the record [which should be redacted, with the remainder of the record produced].

The Attorney General believes that the documents sought are of great public interest and not exempt from required disclosure under FOIA. In addition, given that it is in the public interest to disclose these records, even if you determine that certain of the records sought are exempt under FOIA, the Attorney General requests that you exercise your discretionary authority to disclose these records.

If you deny any part of this request, please cite each specific reason that you believe justifies your refusal to release the records. Should you elect to withhold any records or portions of records responsive to this request under the exemption at 5 U.S.C. § 552(b)(5), for each withheld record or portion, please identify the author and all recipients; the date; the subject; and the particular privilege claimed. For each record or portion withheld under 5 U.S.C. § 552(b)(5) based on a claim of deliberative process privilege, please also provide a complete explanation of why the record qualifies for that privilege.

We are willing to confer regarding the scope of this request in an effort to expedite EPA's response.

Request For a Fee Waiver

The California Attorney General is, of course, a government official and not a commercial organization. The Attorney General requests a waiver of search and copying fees associated with this request. A fee waiver is appropriate under 5 U.S.C. § 552(a)(4)(A)(iii) because disclosure is likely to contribute significantly to public understanding of the operations and activities of the government and disclosure is not primarily in the commercial interest of the requester. The criteria for a waiver set forth at 40 C.F.R. § 2.107(l) are also met. The first criteria, at 40 C.F.R. § 2.107(l)(2)(i), is met because the subject of the request is the operation and activity of EPA with respect to review and evaluation of information and involvement in discussion, review, development and/or announcement of federal agency views related to preemption of state regulation of motor vehicle carbon dioxide emission.

The information sought is likely to contribute to an increased public understanding of the operations and activities of EPA and other federal agencies and thus the second criteria, at 40 C.F.R. 2.107(l)(2)(ii), is met. The Attorney General's Office acts on behalf of the State and the public pursuant to the California Constitution, statutory authority, and common law. See Cal. Const. art. V, § 13; Cal. Gov. Code §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners*, 11 Cal.3d 1, 14-15 (1974). The requested records will inform the Attorney General and the public about what information that EPA possesses and the role of EPA and other federal

July 18, 2006

Page 3

agencies related to the views that have been expressed by NHTSA regarding preemption of state regulation of motor vehicle carbon dioxide emissions. Those views are directed specifically at regulations developed by California's Air Resources Board that require a reduction in motor vehicle greenhouse gas emissions, including carbon dioxide. Those California regulations are the subject of significant interest to the public, the legislature, and the media in the State of California. The Attorney General is defending those regulations against a challenge by the auto industry. A key issue in state-federal relations and in the ability of the State of California to promulgate regulations protecting public health and safety is the nature and extent of federal preemption of state law. The information requested will enhance the Attorney General and the public's understanding of various federal agencies' roles regarding this issue and how and why NHTSA came to express the view that state regulation of motor vehicle carbon dioxide emissions is preempted by federal law.

Disclosure of the information requested will contribute significantly to public understanding of the issue described above, therefore the third and fourth criteria, at 40 C.F.R. § 2.107(l)(2)(iii) and (iv), are met. The information requested is not otherwise publicly available. The requested information will help the Attorney General in representing over 30 million people of the State of California and will help to significantly increase public understanding by Californians of the activities of EPA and its role in the decision-making process regarding federal views on preemption of state regulation of motor vehicle carbon dioxide emissions. The State of California, and the people represented by the Attorney General, would benefit significantly by access to the information requested.

The final two criteria at 40 C.F.R. § 2.107(l)(3)(i) and (ii) are met because the Attorney General has no commercial interest in the information requested.

Please send all requested materials to my attention at the address listed above. I ask that you provide all records created electronically (or currently existing in electronic format) on a CD. Please call me at 510-622-2145 if you have any questions about this request.

Sincerely,



SANDRA GOLDBERG

Deputy Attorney General

For BILL LOCKYER
Attorney General

cc: Marc Melnick
Ken Alex
Susan Fiering
Laura Zuckerman

EXHIBIT C



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region IX

75 Hawthorne Street (OPA-2)
San Francisco, CA 94105

August 08, 2006

Ms. Sandra Goldberg
State of California Dept of Justice
1515 Clay Street, 20th Floor
PO Box 70550
Oakland, CA, 94612-0550

RE: Freedom of Information Request No. 09-RIN-00524-06

Dear Ms. Goldberg:

By letter dated July 18, 2006 and received in this office on July 24, 2006, you asked for a waiver of fees associated with your FOIA request for records related to:

All records related to state regulation of motor vehicle carbon dioxide emissions and/or preemption of such state regulation.

I have reviewed your fee waiver justification and based on the information provided, I am granting your fee waiver request. The Air Division will be responding to your FOIA request.

If you have any questions, please contact me at (415) 947-4251.

Sincerely,

A handwritten signature in black ink that reads "Ivry I. Johnson".

Ivry I. Johnson
FOIA Officer
Office of Public Affairs

EXHIBIT D



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

August 14, 2006

Ms. Sandra Goldberg
State of California Dept of Justice
1515 Clay Street, 20th Floor
PO Box 70550
Oakland, CA 94612-0550

RE: Request No: HQ-RIN-02004-06

Dear Ms. Goldberg,

This is to acknowledge receipt of your Freedom of Information Act (FOIA), 5 U.S.C. 552, request dated July 18, 2006 and received in this office on August 11, 2006, for records related to:

Information related to state regulation of motor vehicle carbon dioxide emissions and/or preemption of such state regulation (Total transfer from Region 9.)

If you have any questions, please contact the Requester Service Center at 202-566-1667 or by email at HQ.FOIA@epa.gov. Please provide your FOIA request number in all communications.

Sincerely,

Larry F. Gottesman
National FOIA Officer

EXHIBIT E



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 11 2006

Ms. Sandra Goldberg
Deputy Attorney General
State of California, Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550

OFFICE OF
AIR AND RADIATION

RE: Freedom of Information Act Request: HQ-RIN-02004-06

Dear Ms. Goldberg:

This is in response to your Freedom of Information Act (FOIA) request of July 18, 2006, regarding records related to state regulation of motor vehicle carbon dioxide emissions and/or preemption of such state regulation.

I wish to advise you that we have not yet been able to obtain the records you requested due to the need to search for, collect, and appropriately examine a large amount of separate and distinct records located in several offices within EPA. My colleague Mr. Bob Doyle and I had the opportunity to speak with you and your colleague Ms. Laura Zuckerman on September 8, 2006 in order to help clarify the records you seek and perhaps prioritize the collection and review of records to potentially be released. I hope that we can have at least one additional telephone conversation of this manner, and I hope that an initial determination regarding the first "grouping" of materials can be made within the next few weeks.

Should you have any further questions or suggestions please feel free to contact me at 202-343-9256.

Sincerely,

A handwritten signature in black ink that reads "David Dickinson".

David Dickinson

Attorney-Advisor, Office of Air and Radiation

EXHIBIT F

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: 510-622-2100
Telephone: 510-622-2145
Facsimile: 510-622-2270
E-Mail: sandra.goldberg@doj.ca.gov

October 11, 2006

By Telecopy and Mail

David Dickinson
Attorney-Advisor, Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: State of California FOIA Request Dated July 18, 2006

Dear Mr. Dickinson:

I am sending this letter to supercede the letter that I sent you earlier today in error (copy attached). We agree to limit the time period of the above FOIA request with respect to records from the Administrator's Office to records from *January 2000 and later*. There may be records from the earlier time period that relate to California's ZEV regulations and that are responsive to the FOIA request and of interest to the state. I apologize for any confusion this may have caused.

Please provide the records that you have located to date as soon as possible. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Goldberg".

SANDRA GOLDBERG
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

Attachment

cc: Marc Melnick
Caryn Craig
Laura Zuckerman

EXHIBIT G

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: 510-622-2100
Telephone: 510-622-2145
Facsimile: 510-622-2270
E-Mail: sandra.goldberg@doj.ca.gov

November 13, 2006

By Telecopy and Mail

David Dickinson
Attorney-Advisor, Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: State of California FOIA Request Dated July 18, 2006

Dear Mr. Dickinson:

As you know, we are waiting for a response from EPA to our FOIA request that was sent on July 18, 2006 (copy enclosed). These records relate to an extremely important and timely issue to the citizens of California and the Attorney General. We request that EPA send us all non-exempt records that you have located at this time. If there are documents that you have not yet reviewed, those may be provided subsequently.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Goldberg".

SANDRA GOLDBERG
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

Enclosure

cc: Marc Melnick
Caryn Craig
Ellen Peters
Laura Zuckerman

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: 510-622-2100
Telephone: 510-622-2145
Facsimile: 510-622-2270
E-Mail: sandra.goldberg@doj.ca.gov

July 18, 2006

By Overnight Delivery

Larry Ray, National FOIA Officer
Environmental Protection Agency
Records, FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Request for Records Under FOIA

Dear Mr. Ray:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, and its implementing regulations, I hereby make this request for records on behalf of the Attorney General of the State of California. This request describes (1) the records sought; and (2) our request for a fee waiver for production of these records.

Request for Records

The Office of the Attorney General respectfully requests the disclosure of all records, including agendas, minutes and attendance lists of meetings, e-mails, correspondence, notes of phone conversations, proposals, drafts, comments, notes, memoranda, intra and inter-agency communications, and any other record (hereafter "records") related to **state regulation** of motor vehicle carbon dioxide emissions and/or preemption of such state regulation.

If a portion of a record is responsive to the above request, but another portion is not responsive, we request that you disclose the entire record, without redacting any non-responsive portions.

This request includes records at the headquarters or other offices of the Environmental Protection Agency ("EPA"), and in the individual files of agency employees. This request is made with the understanding that it will be forwarded to any other offices that may be in the possession of the requested documents.

This request does not apply to:

- (a) records addressing regulation of motor vehicle carbon dioxide emissions by EPA; and

July 18, 2006
Page 2

(b) a record that in its entirety contains only details of technologies and product plans for which the National Highway Traffic Safety Administration ("NHTSA") granted an automobile manufacturer's request for confidential treatment; or if a portion of a requested record contains such information, this request does not apply to the confidential portion of the record [which should be redacted, with the remainder of the record produced].

The Attorney General believes that the documents sought are of great public interest and not exempt from required disclosure under FOIA. In addition, given that it is in the public interest to disclose these records, even if you determine that certain of the records sought are exempt under FOIA, the Attorney General requests that you exercise your discretionary authority to disclose these records.

If you deny any part of this request, please cite each specific reason that you believe justifies your refusal to release the records. Should you elect to withhold any records or portions of records responsive to this request under the exemption at 5 U.S.C. § 552(b)(5), for each withheld record or portion, please identify the author and all recipients; the date; the subject; and the particular privilege claimed. For each record or portion withheld under 5 U.S.C. § 552(b)(5) based on a claim of deliberative process privilege, please also provide a complete explanation of why the record qualifies for that privilege.

We are willing to confer regarding the scope of this request in an effort to expedite EPA's response.

Request For a Fee Waiver

The California Attorney General is, of course, a government official and not a commercial organization. The Attorney General requests a waiver of search and copying fees associated with this request. A fee waiver is appropriate under 5 U.S.C. § 552(a)(4)(A)(iii) because disclosure is likely to contribute significantly to public understanding of the operations and activities of the government and disclosure is not primarily in the commercial interest of the requester. The criteria for a waiver set forth at 40 C.F.R. § 2.107(l) are also met. The first criteria, at 40 C.F.R. § 2.107(l)(2)(i), is met because the subject of the request is the operation and activity of EPA with respect to review and evaluation of information and involvement in discussion, review, development and/or announcement of federal agency views related to preemption of state regulation of motor vehicle carbon dioxide emission.

The information sought is likely to contribute to an increased public understanding of the operations and activities of EPA and other federal agencies and thus the second criteria, at 40 C.F.R. 2.107(l)(2)(ii), is met. The Attorney General's Office acts on behalf of the State and the public pursuant to the California Constitution, statutory authority, and common law. See Cal. Const. art. V, § 13; Cal. Gov. Code §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners*, 11 Cal.3d 1, 14-15 (1974). The requested records will inform the Attorney General and the public about what information that EPA possesses and the role of EPA and other federal

July 18, 2006
Page 3

agencies related to the views that have been expressed by NHTSA regarding preemption of state regulation of motor vehicle carbon dioxide emissions. Those views are directed specifically at regulations developed by California's Air Resources Board that require a reduction in motor vehicle greenhouse gas emissions, including carbon dioxide. Those California regulations are the subject of significant interest to the public, the legislature, and the media in the State of California. The Attorney General is defending those regulations against a challenge by the auto industry. A key issue in state-federal relations and in the ability of the State of California to promulgate regulations protecting public health and safety is the nature and extent of federal preemption of state law. The information requested will enhance the Attorney General and the public's understanding of various federal agencies' roles regarding this issue and how and why NHTSA came to express the view that state regulation of motor vehicle carbon dioxide emissions is preempted by federal law.

Disclosure of the information requested will contribute significantly to public understanding of the issue described above, therefore the third and fourth criteria, at 40 C.F.R. § 2.107(l)(2)(iii) and (iv), are met. The information requested is not otherwise publicly available. The requested information will help the Attorney General in representing over 30 million people of the State of California and will help to significantly increase public understanding by Californians of the activities of EPA and its role in the decision-making process regarding federal views on preemption of state regulation of motor vehicle carbon dioxide emissions. The State of California, and the people represented by the Attorney General, would benefit significantly by access to the information requested.

The final two criteria at 40 C.F.R. § 2.107(l)(3)(i) and (ii) are met because the Attorney General has no commercial interest in the information requested.

Please send all requested materials to my attention at the address listed above. I ask that you provide all records created electronically (or currently existing in electronic format) on a CD. Please call me at 510-622-2145 if you have any questions about this request.

Sincerely,



SANDRA GOLDBERG
Deputy Attorney General

For BILL LOCKYER
Attorney General

cc: Marc Melnick
Ken Alex
Susan Fiering
Laura Zuckerman

EXHIBIT H



**U.S. Department of
Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

AUG 3 2006

Sandra Goldberg
State of California Department of Justice
1515 Clay Street
20th Floor
Post Office Box 70550
Oakland, CA 94612-0550

Dear Ms. Goldberg:

The purpose of this letter is to acknowledge receipt of your recent request for records under the Freedom of Information Act (FOIA) Division. Your request dated July 18, 2006, was received in my office on July 19, 2006. Your letter has been given identification number 2006-255.

You requested records pertaining to the discussion of state regulations, specifically the State of California's regulations of motor vehicle carbon dioxide emissions found in "Section XIV.D. Preemption, published in the Federal Register on April 6, 2006 and other records.

If you have any questions concerning your request, please call (202) 366-4542 and refer to the assigned identification number listed above.

Sincerely,

A handwritten signature in cursive script that reads "Darlene A. Wallace".

Darlene A. Wallace
Paralegal Specialist

EXHIBIT I

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: 510-622-2100
Telephone: 510 622-2145
Facsimile: 510 622-2270
E-Mail: sandra.goldberg@doj.ca.gov

November 20, 2006

By Telecopy and Mail

Letitia Kim
Assistant U.S. Attorney
Office of the United States Attorney
450 Golden Gate Avenue
San Francisco, CA 94102

RE: *Lockyer v. Office of Management and Budget et al.*, Case No. C06-02654 SC

Dear Ms. Kim:

I am writing regarding the California Attorney General's FOIA request to Department of Transportation ("DOT") and National Highway Traffic Safety Administration ("NHTSA") dated July 18, 2006 (copy enclosed). We received a letter from DOT dated August 3, 2006 acknowledging receipt of this request. You requested that we communicate with you about this FOIA request, instead of with DOT/NHTSA directly. We discussed this on the phone on October 30, 2006 and you indicated that we should receive the agencies' response in one and a half weeks, or by November 10, 2006.

We still have not received the requested records. These records relate to an extremely important and timely issue to the citizens of California and the Attorney General. We request that DOT/NHTSA provide all non-exempt records that have been located at this time. If there are records that DOT/NHTSA has not yet reviewed, those may be provided subsequently.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Goldberg".

SANDRA GOLDBERG
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

Enclosure

cc: Laura Zuckerman

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: 510-622-2100
Telephone: 510-622-2145
Facsimile: 510-622-2270
E-Mail: sandra.goldberg@doj.ca.gov

July 18, 2006

By Overnight Mail

National Highway Traffic Safety Administration
Executive Secretariat
Room 5221
400 Seventh Street, S.W.
Washington, DC 20590

Donald Hawkins, FOIA Officer
Office of Management & Budget
Room 9026
725 17th Street, NW
Washington, DC 20503

Kathy Ray
U.S. Department of Transportation
Office of the Secretary of Transportation
C-12/Room 5432
400 Seventh Street, SW
Washington, DC 20590

RE: Request for Records Under FOIA

Dear FOIA Officers:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, and its implementing regulations, I hereby make this request for records on behalf of the Attorney General of the State of California. This request describes (1) the records sought; and (2) our request for a fee waiver for production of these records.

Request for Records

The Office of the Attorney General respectfully requests the disclosure of:

(1) All records, including agendas, minutes and attendance lists of meetings, e-mails, correspondence, notes of phone conversations, proposals, drafts, comments, notes, memoranda, intra and inter-agency communications, and any other record (hereafter "records") related to the discussion of state regulation, and/or specifically the State of California's regulation, of motor vehicle carbon dioxide emissions found in "Section XIV. D. Preemption," published in the Federal Register on April 6, 2006, at volume 71, pages 17654-17670.

July 18, 2006

Page 2

- (2) All records related to the meetings on October 10, 2005 and November 4, 2005, or at any other time, between representatives of National Highway Traffic Safety Administration ("NHTSA") and representatives of Nissan North America, Inc. regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck Corporate Average Fuel Economy ("CAFE") program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published April 6, 2006, including any records provided in preparation for the meetings or provided by any participant in the meetings.
- (3) All records related to the meeting on January 17, 2005, or at any other time, between representatives of NHTSA and representatives of DaimlerChrysler regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck CAFE program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published on April 6, 2006, including any records provided in preparation for the meetings or any records provided by any participant in the meetings.
- (4) All records related to the periodic telephone conversations from April 27, 2004 to March 16, 2006, or at any other time, between representatives of NHTSA and representatives of General Motors, Ford Motor Company, DaimlerChrysler Corporation, American Honda Motor Company, Inc., Hyundai Kia America Technical Center, Inc., Mitsubishi Motors R&D of America, Inc., Nissan North America, Inc., and/or Fuji Heavy Industries, USA (parent company of Subaru) regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck CAFE program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published on April 6, 2006, including any records provided in preparation for the conversations or provided by any participant in the conversations.
- (5) All records related to discussions of state regulation of motor vehicle carbon dioxide emissions and/or preemption of such regulation at any meetings, conferences, or discussions that took place between President Bush and executives and/or representatives of automobile manufacturers, and any records related to that issue that were provided in preparation for such meetings, conferences or discussions that were either planned or that took place, and any records provided by any participant in such meetings, conferences or discussions.

If a portion of a record is responsive to this request, but another portion is not responsive, we request that you disclose the entire record, without redacting any non-responsive portions.

These requests do not apply to a record that in its entirety contains only details of technologies and product plans for which NHTSA granted an automobile manufacturer's request for confidential treatment; or if a portion of a requested record contains such information, this request does not apply to the confidential portion of the record [which should be redacted, with the remainder of the record produced].

July 18, 2006

Page 3

This request includes records at the headquarters or other offices of the National Highway Traffic Safety Administration, Office of Management and Budget and Department of Transportation, and in the individual files of agency employees. This request is made with the understanding that it will be forwarded to any other offices that may be in the possession of the requested documents.

The Attorney General believes that the documents sought are of great public interest and not exempt from required disclosure under FOIA. In addition, given that it is in the public interest to disclose these records, even if you determine that certain of the records sought are exempt under FOIA, the Attorney General requests that you exercise your discretionary authority to disclose these records.

If you deny any part of this request, please cite each specific reason that you believe justifies your refusal to release the records. Should you elect to withhold any records or portions of records responsive to this request under the exemption at 5 U.S.C. § 552(b)(5), for each withheld record or portion, please state the identify the author and all recipients; the date; the subject of the record; and the particular privilege claimed. For each record or portion withheld under 5 U.S.C. § 552(b)(5) based on a claim of deliberative process privilege, please also provide a complete explanation of why the record qualifies for that privilege.

Request For a Fee Waiver

The California Attorney General is, of course, a noncommercial organization not subject to review fees. In addition, the Attorney General requests a waiver of search and copying fees associated with this request. Under FOIA, agencies must waive such fees where disclosure is likely to contribute significantly to public understanding of the operations and activities of the government and disclosure is not primarily in the commercial interest of the requesters. 5 U.S.C. § 552(a)(4)(A)(iii). Under the criteria set forth at 49 C.F.R. § 7.44(f) (Department of Transportation) and 5 C.F.R. § 1303.70 (Office of Management and Budget), such a waiver is appropriate here. The Attorney General's Office acts on behalf of the State and the public pursuant to the California Constitution, statutory authority, and common law. See Cal. Const. art. V, § 13; Cal. Gov. Code §§ 12511, 12600-12; *D'Amico v. Board of Medical Examiners*, 11 Cal.3d 1, 14-15 (1974).

The subject of this request concerns records related to views expressed by NHTSA that are, in part, directed specifically at regulations developed by California's Air Resources Board that require reduction of motor vehicle greenhouse gas emissions, including carbon dioxide. Those California regulations are the subject of significant interest to the public, the legislature, and the media in the State of California. The California Attorney General is defending those regulations against a challenge by the auto industry. A key issue in state-federal relations and in the ability of the State of California to promulgate regulations protecting public health and safety is the nature and extent of federal preemption of state law. NHTSA's discussion of preemption published in the Federal Register (volume 71, pages 17654-17670) directly relates to that issue.

July 18, 2006

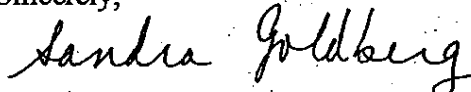
Page 4

The requested records will help the Attorney General in representing over 30 million people of the State of California and will help to significantly increase public understanding by Californians of the decision-making process of NHTSA, as well as the roles of other agencies. The State of California, and the people represented by the Attorney General, would benefit significantly by access to the information requested.

The Attorney General seeks the materials without reference to any commercial interest.

Please send all requested materials to my attention at the address listed above. I ask that you provide all records created electronically (or currently existing in electronic format) on a CD. Please call me at 510-622-2145 if you have any questions about this request.

Sincerely,



SANDRA GOLDBERG

Deputy Attorney General

For BILL LOCKYER
Attorney General

cc: Marc Melnick
Ken Alex
Susan Fiering
Laura Zuckerman

EXHIBIT J



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 20, 2006

Ms. Sandra Goldberg
Deputy Attorney General
State of California
Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550

Dear Ms. Goldberg:

This responds to your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated July 18, 2006, which was received in this office on July 24, 2006. Your request asked for:

- (1) All records, including agendas, minutes and attendance lists of meetings, e-mails, correspondence, notes of phone conversations, proposals, drafts, comments, notes, memoranda, intra and inter-agency communications, and any other record (hereafter "records") related to the discussion of state regulation, and/or specifically the State of California's regulation, of motor vehicle carbon dioxide emissions found in "Section XIV. D. Preemption," published in the Federal Register on April 6, 2006, at volume 71, pages 17654-17670.
- (2) All records related to the meetings on October 10, 2005 and November 4, 2005, or at any other time, between representatives of National Highway Traffic Safety Administration ("NHTSA") and representatives of Nissan North America, Inc. regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck Corporate Average Fuel Economy ("CAFE") program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published April 6, 2006, including any records provided in preparation for the meetings or provided by any participant in the meetings.
- (3) All records related to the meeting on January 17, 2005, or at any other time, between representatives of NHTSA and representatives of DaimlerChrysler regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck CAFE program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published on April 6, 2006, including any records provided in preparation for the meetings or any records provided by any participant in the meetings.
- (4) All records related to the periodic telephone conversations from April 27, 2004 to March 16, 2006, or at any other time, between representatives of NHTSA and

representatives of General Motors, Ford Motor Company, DaimlerChrysler Corporation, American Honda Motor Company, Inc., Hyundai Kia America Technical Center, Inc., Mitsubishi Motors R&D of America, Inc., Nissan North America, Inc., and/or Fuji Heavy Industries, USA (parent company of Subaru) regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck CAFE program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published on April 6, 2006, including any records provided in preparation for the conversations or provided by any participant in the conversations.

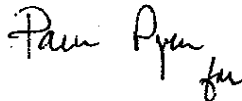
- (5) All records related to discussions of state regulation of motor vehicle carbon dioxide emissions and/or preemption of such regulation at any meetings, conferences, or discussions that took place between President Bush and executives and/or representatives of automobile manufacturers, and any records related to that issue that were provided in preparation for such meetings, conferences or discussions that were either planned or that took place, and any records provided by any participant in such meetings, conferences or discussions.

Upon a thorough search of our files, we have identified 141 documents that are potentially responsive to your request. Of these, we have determined that 9 documents are appropriate for disclosure in their entirety. We have also determined that 10 documents are appropriate to be released in part and portions of these documents are being redacted pursuant to FOIA Exemption 5, U.S.C. 552 (b) (5), because they constitute interagency or intra-agency predecisional, deliberative material.

It is my decision, however, that the remaining 122 documents are exempt from mandatory disclosure pursuant to FOIA Exemption, 5 U.S.C. 552(b)(5), because they constitute interagency or intra-agency predecisional, deliberative communications, the disclosure of which would inhibit frank and candid exchange of views that is necessary for effective government decision making. I have concluded that the disclosure of these documents would not be in the public interest and therefore decline to release them.

This is my personal decision which may be appealed pursuant to OMB regulations, at 5 C.F.R. 1303.

Sincerely,



Lauren E. Wright
Deputy Assistant Director
for Administration

EXHIBIT K

BILL LOCKYER
Attorney General

State of California
DEPARTMENT OF JUSTICE



1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: 510-622-2100
Telephone: 510-622-2145
Facsimile: 510-622-2270
E-Mail: sandra.goldberg@doj.ca.gov

October 4, 2006

By Telecopy and Mail

Dionne Hardy, FOIA Officer
Office of Management & Budget
Room 9026
725 17th Street, NW
Washington, DC 20503

Re: Freedom of Information Act Appeal

Dear Ms. Hardy:

This letter will appeal the Office of Management and Budget's ("OMB") denial of the State of California Attorney General's Freedom of Information Act ("FOIA") request dated July 18, 2006. Acting on behalf of OMB, Lauren E. Wright, Deputy Assistant Director for Administration, denied the FOIA request as to the majority of the records sought. A copy of the September 20, 2006 denial letter, without enclosures, is attached as Exhibit A. The Attorney General's Office received OMB's denial letter on September 25, 2006, and thus this appeal is made "within 30 days of receipt of a denial" as required under 5 C.F.R. § 1303.10(e).

OMB's response provided a few records responsive to the Attorney General's request, some with redactions, but also stated that OMB was withholding 122 responsive documents pursuant to the exemption at 5 U.S.C. § 552(b)(5) based on the assertion that they constitute interagency or intra-agency pre-decisional, deliberative communications.

We are appealing OMB's denial of the FOIA request both as to the 122 withheld documents and the redacted portions of the documents that were provided. The basis for this appeal is twofold:

(1) OMB has improperly withheld records in that it has failed to demonstrate that the documents withheld, either in their entirety or in part, meet the standards for withholding under 5 U.S.C. § 552(b)(5). OMB's explanation of its denial is insufficient in scope, as it is inadequate to permit the Attorney General to evaluate whether the claimed exemption is applicable, and it is incapable of withstanding close scrutiny by the courts, should *de novo* judicial review be sought.

(2) OMB has failed to meet the requirements of 5 U.S.C. § 552(b), which provides that reasonably segregable portions of records be disclosed.

October 4, 2006

Page 2

Because OMB has failed to comply with FOIA requirements, and because OMB has failed to demonstrate that 5 U.S.C. § 552(b)(5) covers the material withheld, I request that OMB review the entire file and order all the responsive records withheld (or any segregable portions thereof) disclosed to the Attorney General's Office in native file format as soon as possible. Any information that is factual, rather than subjective, that is contained in records that have been withheld should be disclosed in redacted form. In the event any records or portions of any records continue to be withheld, redacted, or deleted, I request a specific listing of the records or portions withheld, together with an index or similar statement detailing the basis for reliance on the exemption in 5 U.S.C. § 552(b)(5). The statement should include, for each of the records or portions withheld, the author and all recipients; date of the record; subject of the record; and an explanation of why the record qualifies for the privilege, including identifying the pending decision to which the communications were "pre-decisional" and establishing that the communication is deliberative. Finally, because disclosure of these records would be in the public interest, even if you determine that certain of the documents sought are exempt under FOIA, the Attorney General requests that you disclose them as a matter of agency discretion.

Under 5 U.S.C. § 552(a)(6)(A)(ii) and 5 C.F.R. § 1303.10(e), I request a response to this appeal within 20 working days. Please call me at 510-622-2145 if you have any questions about this appeal.

Sincerely,



SANDRA GOLDBERG
Deputy Attorney General

For BILL LOCKYER
Attorney General

cc: Marc Melnick
Caryn Craig
Laura Zuckerman
Leticia Kim



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 20, 2006

Ms. Sandra Goldberg
Deputy Attorney General
State of California
Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550

Dear Ms. Goldberg:

This responds to your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated July 18, 2006, which was received in this office on July 24, 2006. Your request asked for:

- (1) All records, including agendas, minutes and attendance lists of meetings, e-mails, correspondence, notes of phone conversations, proposals, drafts, comments, notes, memoranda, intra and inter-agency communications, and any other record (hereafter "records") related to the discussion of state regulation, and/or specifically the State of California's regulation, of motor vehicle carbon dioxide emissions found in "Section XIV. D. Preemption," published in the Federal Register on April 6, 2006, at volume 71, pages 17654-17670.
- (2) All records related to the meetings on October 10, 2005 and November 4, 2005, or at any other time, between representatives of National Highway Traffic Safety Administration ("NHTSA") and representatives of Nissan North America, Inc. regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck Corporate Average Fuel Economy ("CAFE") program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published April 6, 2006, including any records provided in preparation for the meetings or provided by any participant in the meetings.
- (3) All records related to the meeting on January 17, 2005, or at any other time, between representatives of NHTSA and representatives of DaimlerChrysler regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck CAFE program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published on April 6, 2006, including any records provided in preparation for the meetings or any records provided by any participant in the meetings.
- (4) All records related to the periodic telephone conversations from April 27, 2004 to March 16, 2006, or at any other time, between representatives of NHTSA and

representatives of General Motors, Ford Motor Company, DaimlerChrysler Corporation, American Honda Motor Company, Inc., Hyundai Kia America Technical Center, Inc., Mitsubishi Motors R&D of America, Inc., Nissan North America, Inc., and/or Fuji Heavy Industries, USA (parent company of Subaru) regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck CAFE program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published on April 6, 2006, including any records provided in preparation for the conversations or provided by any participant in the conversations.

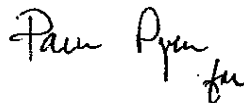
- (5) All records related to discussions of state regulation of motor vehicle carbon dioxide emissions and/or preemption of such regulation at any meetings, conferences, or discussions that took place between President Bush and executives and/or representatives of automobile manufacturers, and any records related to that issue that were provided in preparation for such meetings, conferences or discussions that were either planned or that took place, and any records provided by any participant in such meetings, conferences or discussions.

Upon a thorough search of our files, we have identified 141 documents that are potentially responsive to your request. Of these, we have determined that 9 documents are appropriate for disclosure in their entirety. We have also determined that 10 documents are appropriate to be released in part and portions of these documents are being redacted pursuant to FOIA Exemption 5, U.S.C. 552 (b) (5), because they constitute interagency or intra-agency predecisional, deliberative material.

It is my decision, however, that the remaining 122 documents are exempt from mandatory disclosure pursuant to FOIA Exemption, 5 U.S.C. 552(b)(5), because they constitute interagency or intra-agency predecisional, deliberative communications, the disclosure of which would inhibit frank and candid exchange of views that is necessary for effective government decision making. I have concluded that the disclosure of these documents would not be in the public interest and therefore decline to release them.

This is my personal decision which may be appealed pursuant to OMB regulations, at 5 C.F.R. 1303.

Sincerely,



Lauren E. Wright
Deputy Assistant Director
for Administration

EXHIBIT L



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 6, 2006

Ms. Sandra Goldberg
Deputy Attorney General
State of California, Department of Justice
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550

[Sent via Fax (510) 622-2270 and First Class U.S. Mail]

Dear Ms. Goldberg:

This responds to your appeal letter dated October 4, 2006, concerning the Office of Management and Budget's (OMB's) September 20, 2006 response letter to your Freedom of Information Act (FOIA) request dated July 18, 2006, which was received in OMB's FOIA Office on July 24, 2006.

Your FOIA request asked for:

- (1) All records, including agendas, minutes and attendance lists of meetings, e-mails, correspondence, notes of phone conversations, proposals, drafts, comments, notes, memoranda, intra and inter-agency communications, and any other record (hereafter "records") related to the discussion of state regulation, and/or specifically the State of California's regulation, of motor vehicle carbon dioxide emissions found in "Section XIV. D. Preemption," published in the Federal Register on April 6, 2006, at volume 71, pages 17654-17670.
- (2) All records related to the meetings on October 10, 2005 and November 4, 2005, or at any other time, between representatives of National Highway Traffic Safety Administration ("NHTSA") and representatives of Nissan North America, Inc. regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck Corporate Average Fuel Economy ("CAFE") program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published April 6, 2006, including any records provided in preparation for the meetings or provided by any participant in the meetings.
- (3) All records related to the meeting on January 17, 2005, or at any other time, between representatives of NHTSA and representatives of DaimlerChrysler regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck CAFE program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published on April 6, 2006, including any

records provided in preparation for the meetings or any records provided by any participant in the meetings.

- (4) All records related to the periodic telephone conversations from April 27, 2004 to March 16, 2006, or at any other time, between representatives of NHTSA and representatives of General Motors, Ford Motor Company, DaimlerChrysler Corporation, American Honda Motor Company, Inc., Hyundai Kia America Technical Center, Inc., Mitsubishi Motors R&D of America, Inc., Nissan North America, Inc., and/or Fuji Heavy Industries, USA (parent company of Subaru) regarding the August 30, 2005 notice of proposed rulemaking to amend the light truck CAFE program and establish light truck CAFE standards for model years 2008-2011 or the final CAFE rule published on April 6, 2006, including any records provided in preparation for the conversations or provided by any participant in the conversations.
- (5) All records related to discussions of state regulation of motor vehicle carbon dioxide emissions and/or preemption of such regulation at any meetings, conferences, or discussions that took place between President Bush and executives and/or representatives of automobile manufacturers, and any records related to that issue that were provided in preparation for such meetings, conferences or discussions that were either planned or that took place, and any records provided by any participant in such meetings, conferences or discussions.

In our September 20, 2006 response letter, we stated that upon a search of our files, we found 141 documents potentially responsive to your request. Of these documents, we released to you nine (9) documents in full and an additional ten (10) documents which were released in part and withheld in part. In our September 20th letter we also informed you that the remaining 122 documents were being withheld from release after we determined that those documents were exempt from mandatory disclosure pursuant to FOIA Exemption 5, 5 U.S.C. 552(b)(5). Therefore, OMB indicated in its September 20th letter, that it was withholding, in whole or in part, a total of 132 documents.

In your appeal letter, you asked OMB to review the entire file and reconsider the decision to withhold the documents withheld in whole or part under FOIA exemption (b)(5). In response to your appeal, we have conducted a careful review of the entire file. During our review, we located two (2) additional documents that were not originally located as part of the file. We are releasing these two (2) documents in their entirety.

In addition, we identified documents in the file that were inadvertently miscounted; in some cases, multiple pages of a document were counted as separate documents and in other cases, multiple documents were counted as one document. In total, this miscounting amounts to a net of ten (10) additional documents. Consequently, in light of our review, we have revised the total number of potentially responsive documents that have been withheld (in whole or in part) from 132 to 142 documents (which does not include the two (2) newly located documents referenced in the previous paragraph, which OMB is releasing).

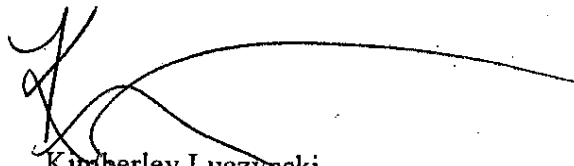
In response to your appeal, OMB has re-reviewed the 142 documents being withheld under FOIA exemption (b)(5). Of these, we have determined that for one (1) document that was previously withheld in part and released in part, the remaining withheld portion is non-responsive to your request, and therefore, the responsive portion of that document has been released in full.

In addition, we are releasing to you an additional five (5) documents in full (which includes the two (2) newly located documents described above and three (3) documents that were previously withheld in part) and an additional seven (7) documents in part. These documents are enclosed.

We have determined that the remaining 126 documents withheld in full and 13 documents withheld in part have been properly withheld pursuant to FOIA Exemption 5 U.S.C. §552(b)(5). Exemption 5 exempts from release those documents which constitute intra-agency or inter-agency, pre-decisional, and deliberative communications, the disclosure of which would inhibit the frank and candid expression of views necessary for the government decision making process. The documents we are continuing to withhold include comments on, and drafts of, proposed regulatory language. We believe that the release of these materials would chill the deliberative process, which would be contrary to the public interest. Moreover, we have determined that the documents do not contain any information that is reasonably segregable from the withheld information, therefore we are continuing to withhold these documents (in their entirety and in part) as exempt from mandatory disclosure under FOIA Exemption (b)(5). For these reasons and the reasons cited in our earlier correspondence, I reaffirm OMB's prior decision not to release this material.

Judicial review of my action on your appeal is available to you in accordance with the provisions of 5 U.S.C. § 552(a)(4).

Sincerely,

A handwritten signature in black ink, appearing to be 'Kimberley Luczynski', written over a horizontal line.

Kimberley Luczynski
Acting Deputy General Counsel

Enclosures